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In the Supreme Court of the United States

OCTOBER TERM, 1982

JAMES BEIL,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT

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QUESTIONS PRESENTED

1. Whether the fruits of the warrantless station-house search of Petitioner's automobile trunk were properly suppressed by the trial court when such was pursuant to an initial detention by police based on nothing more than an inarticulate hunch and a stated desire to check the identification of Petitioner; did the Appellate Court of Illinois, Second District, err in reversing the suppression order?

2. Whether the warrantless station-house search of Petitioner's automobile trunk was violative of Petitioner's right to be free from unreasonable searches and seizures where the searching officers admittedly had no probable cause to believe the automobile contained contraband, fruits, or instrumentalities of the crime they were investigating; and whether the Appellate Court of Illinois, Second District, erred in reversing the trial court's suppression order.

INDEX

PAGE

Questions Presented 1

Opinion Below 1

Jurisdiction 2

Constitutional Provisions and Statutes Involved 2

Statement of the Case 2

Reasons for Granting the Writ:

I. Where the initial detention of Petitioner and his automobile, from which flowed the warrantless search of his automobile trunk and seizure of items therefrom, was based on nothing more than an inarticulate hunch and a desire by police to obtain Petitioner's identification, the detention was a seizure violative of Petitioner's Fourth Amendment right to be free from unreasonable searches and seizures, and the Appellate Court erred in reversing the trial court's suppression order 8

II. Where there was no probable cause to believe that Petitioner or his car were involved in the theft of another auto, where the police neither sought nor expected to find contraband or fruits or instrumentalities of the theft of the other auto in the Petitioner's car, and where the officer testified that his purpose in searching Petitioner's auto trunk was to verify Petitioner's ownership thereof, which verification the officer had otherwise already accomplished, the warrantless search of Petitioner's auto trunk and seizure of items therefrom was violative of Petitioner's Fourth Amendment rights, and Appellate Court erred in reversing the trial court's suppression order 12

PAGE

Conclusion 15

Appendix A—Opinion of the Appellate Court of Illinois, Second District, dated November 12, 1982 ..... App. 1

Appendix B—Order denying Petition for Leave to Appeal to the Supreme Court of Illinois, dated April 12, 1983 ..... App. 7

AUTHORITIES CITED

Cases

Brown v. Texas, 943 U.S. 47 (1979) 10, 11, 12

Carroll v. United States, 267 U.S. 132 (1925) 13

Chambers v. Maroney, 399 U.S. 42 (1970) 13

Delaware v. Prouse, 440 U.S. 648 (1979) 11, 12

Michigan v. Thomas, ... U.S. ....., 102 S.Ct. 3079 (1982) 13

Stanford v. Texas, 279 U.S. 476 (1965) 14

Terry v. Ohio, 392 U.S. 1 (1968) 8, 9, 10, 12, 13

United States v. Ross, ... U.S. ....., 102 S.Ct. 2157 (1982) 13

Warden v. Hayden, 387 U.S. 294 (1967) 14

In the
Supreme Court of the United States

October Term, 1982

No.

JAMES BEIL,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT

Petitioner James Beil prays that a writ of certiorari be issued to review the judgment of the Appellate Court of Illinois, Second District.

OPINION BELOW

The as yet unpublished opinion of the Appellate Court of Illinois, Second District, is appended to this petition as Appendix A. The order denying Petitioner leave to appeal to the Supreme Court of Illinois is likewise appended to this petition as Appendix B.

JURISDICTION

The opinion and judgment of the Appellate Court of Illinois, Second District, was entered on November 12, 1982. The Supreme Court of Illinois denied a timely filed Petition for Leave to Appeal on April 12, 1983. The instant Petition for Writ of Certiorari is filed within sixty (60) days of said denial by the Supreme Court of Illinois. The jurisdiction of this Honorable Court is invoked pursuant to Title 28, U.S.C., Section 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

On October 31, 1980, Information No. 80 CF 1977-1978 was filed in the Circuit Court of the 18th Judicial Circuit, DuPage County, Illinois, which, in two counts, charged Petitioner James Beil with theft and possession of bur-

glary tools, violations of Chapter 38, Illinois Revised Statutes, Sections 16-1(a)(1) and 19-2, respectively.

On December 11, 1980, Petitioner filed a motion to quash his arrest and suppress evidence which were the fruits of the arrest. Prior to trial and after hearings on the motion, the trial court granted that part of the motion which sought suppression of items of physical evidence which had been seized by police officers from the trunk of Petitioner's automobile subsequent to his arrest.

The People of the State of Illinois appealed this order of suppression to the Illinois Appellate Court, which Court reversed the trial court's order on November 12, 1982.

The Supreme Court of Illinois denied Petitioner leave to appeal to the higher court on April 12, 1983.

The facts of the case as pertinent to the issues in the instant petition, and as adduced at the hearing at the trial court are as follows.

On October 6, 1980, at approximately 8:00 p.m., Detective Romani of the Oak Brook, Illinois, Police, was parked in his unmarked squad car in a shopping center parking lot. Romani observed a maroon Cadillac (hereafter, the "Beil Cadillac"), with three occupants, drive by and park to the rear of Romani's squad. The two vehicles were parked rear to rear. Through his rear view mirror, Romani observed the driver of the Beil Cadillac emerge and proceed to the vehicle's trunk. While Romani saw the trunk open, he was unable to observe what, if any, activity occurred at the trunk.

Officer Romani first took note of this otherwise unnoteworthy activity because the driver of the "Beil Cadillac" appeared to be a young man dressed in blue jeans. The officer admitted, however, that it was not unusual in Oak Brook, an affluent suburb of Chicago, to see similar young

men in blue jeans driving luxury automobiles. (Please note that the prosecutor herein admitted in remarks at trial that Petitioner and his purported companions did not appear to be children or even teenagers).

Nonetheless, Detective Romani radioed for a license plate registration check on the "Beil Cadillac" and determined thereby that the automobile was registered to (Petitioner) James Beil of Chicago and that the car was neither stolen nor the subject of any warrants. The detective, at the time, recalled that he had previously heard of a similar sounding surname with respect to auto thefts in Chicago.

Having admittedly observed no illegal or suspicious acts in the shopping center parking lot, and having received the unremarkable response to the license check, Romani, nonetheless, followed the "Beil Cadillac" out of the parking lot; he also, at this time, radioed for other officers to assist him.

While stopped at a red light, Romani observed the Beil Cadillac proceed to enter a large hotel parking lot. Romani lost sight of the Beil Cadillac for sometime. Romani then proceeded into the hotel lot and observed the "Beil Cadillac" parked in a driving aisle. The lot appeared to be full and, as Romani drove by and passed the "Beil Cadillac", he observed a young man (not the driver he had previously seen at the trunk) in a plaid shirt standing next to the driver's side of the Beil car apparently talking to the occupants. The officer, at that time, could not observe the number of occupants in the Beil car.

Romani parked his car and entered the hotel. He noticed, due to its excellent condition, a 1967 Cadillac (hereafter, the "white Cadillac") parked near the Beil car.

While in the hotel, Romani lost sight of the Beil car and the parking lot generally. At that time Romani, by his

testimony, had observed no illegal nor unusual acts. He was unaware of the ownership status of any of the cars in the lot, including the "white Cadillac", he was unaware of the identity of the young man in the plaid shirt, or whether this man owned the "white Cadillac", he had seen no tools in the man's hand, he had not seen any paraphernalia in the Beil car nor taken from it. Moreover, it was a typical autumn night and it was not unusual for people to be standing and talking in the hotel lot, according to Romani.

While in the hotel, Romani radioed to an Officer Golz who had responded to Romani's earlier call for assistance and who had positioned himself in an adjacent parking lot about 100 feet from the "white Cadillac". According to Golz, from his vantage point he was only able to see the "white Cadillac" from its top up. Golz observed the young man in the plaid shirt approach the "white Cadillac" and then lost sight of the man as he went below Golz's field of vision. Golz communicated this to Romani.

Romani then left the hotel building, from which he had lost sight of the situation, and reentered the parking lot area. Romani observed the "Beil Cadillac" backing up in the driving aisle, and he saw the "white Cadillac" emerging from its parking stall. As he observed the two cars proceeding toward the exit of the lot, Romani radioed an order to Golz to stop the two cars.

Romani ran toward the two cars which were stopped for a red traffic signal at the exit. Romani arrived before Golz and went directly to the "Beil Cadillac". He ordered the occupants to emerge and to produce identification. The driver of the "Beil Cadillac" was Petitioner James Beil who complied with Romani's order.

Meanwhile, Golz arrived a moment later, and, with five or six other officers on the scene, approached the "white

Cadillac'' and, at gunpoint, ordered the driver, a John Wirth, to emerge.

Romani's stated reason for stopping the ''Beil Cadillac,'' which stop occurred a moment before the stop of the ''white Cadillac'', was to check the driver's license and vehicle registration of the driver of the Beil car.

After Petitioner emerged from his car upon Romani's order, he was patted down by Romani, which pat-down produced nothing, and he was placed in the custody of other officers. He was told to stand with his hands spread on the trunk of his car. Romani then walked over to the ''white Cadillac'', which along with its driver, was in the custody of Golz.

According to Romani, Petitioner Beil was in custody at that time, not free to leave the scene.

As Romani then looked into the ''white Cadillac'', he observed, on the front seat, a pulled ignition still attached to a slamhammer tool, and a screwdriver which he believed had been used to start the car. Romani then returned to the area of the Beil car and thoroughly searched Beil's person, finding a screw in one of Beil's pockets. Romani then ran a license check on the ''white Cadillac'', went into the hotel and located its owner, and determined that while the owner had left the car unlocked, he had given nobody permission to take the car.

Meanwhile, Petitioner Beil, in custody, had been transported to the local police station, and his car was towed to the station.

Later, at the station, Detective Romani, seeking to search the trunk of the ''Beil Cadillac'', was unable to locate the key to the trunk of Beil's car, and without the consent of Petitioner, forced the trunk open and seized its contents. The officer had sought no warrants approving the search.

Petitioner and his car, at the time, were in police custody. Also, at the time, the officer had access to an emergency judge to whom he could have gone for authorization for the search, but chose not to.

Romani testified that at the time of the station-house search of the Beil trunk, he knew that no tools had been used to enter the unlocked "white Cadillac" and he had already otherwise recovered the ignition puller and screwdriver from the "white Cadillac". When asked to characterize the nature and object of the search of the Beil trunk in light of these circumstances, Romani said that it had been an "investigatory" search, the object of which was to "ascertain if, in fact, he (Petitioner Beil) was the lawful owner of that vehicle (Beil Cadillac)".

Romani, however, testified that he had much earlier verified the registration of the vehicle to Petitioner Beil and that Petitioner had earlier produced proper identification.

Petitioner was charged with theft of the "white Cadillac" and possession of burglary tools, both charges on an accountability basis. The burglary tools, as charged, were the ignition puller and screwdriver found in the "white Cadillac" and with which Petitioner Beil is charged for constructive possession.

The items seized from the Beil trunk in the station-house search, and which were the object of the motion to suppress below, are items sought by the prosecution to be used as corroborative evidence at trial.

The trial court granted the motion to suppress, precluded the use at trial of the fruits of the search, and the prosecution took an interlocutory appeal. It is the reversal of this suppression order by the Appellate Court of Illinois which is the basis for the instant petition for a writ of certiorari.

REASONS FOR GRANTING THE WRIT

I.

WHERE THE INITIAL DETENTION OF PETITIONER AND HIS AUTOMOBILE, FROM WHICH FLOWED THE WARRANTLESS SEARCH OF HIS AUTOMOBILE TRUNK AND SEIZURE OF ITEMS THEREFROM, WAS BASED ON NOTHING MORE THAN AN INARTICULATE HUNCH AND A DESIRE BY POLICE TO OBTAIN PETITIONER'S IDENTIFICATION, THE DETENTION WAS A SEIZURE VIOLATIVE OF PETITIONER'S FOURTH AMENDMENT RIGHT TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES, AND THE APPELLATE COURT ERRED IN REVERSING THE TRIAL COURT'S SUPPRESSION ORDER.

The Illinois Appellate Court, Second District, justified the initial stopping of Petitioner and his automobile as a temporary and limited detention as authorized by this Court's holding in *Terry* v. *Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L. Ed. 2d 889 (1968). It was pursuant to this threshold determination of the propriety of the initial stop, that the Appellate Court herein approved the later search of Petitioner's automobile trunk and seizure of the contents therein, reversing the trial court's suppression order.

The teachings of this Court, indeed, require such a threshold determination. The Appellate Court, however, erred in finding that the initial detention of Petitioner amounted to a "*Terry*" stop.

In *Terry, supra*, this Court held that where a police officer observes unusual conduct which leads him to reason-

ably conclude that criminal action is afoot, he may stop an individual on the street for investigative inquiry. Such a stop is something less than a technical arrest and requires less than probable cause for constitutional justification. Nonetheless, *Terry* teaches that such a stop is a seizure comprehended by the Fourth Amendment, and, as such, must be reasonable.

This Court, in *Terry*, described the standard of this reasonableness as an "objective" one:

> "Would the facts available to the officer at the moment of the seizure . . . warrant a man of reasonable caution in the belief that the action taken was appropriate? . . .
>
> ". . . Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result this Court has consistently refused to sanction". *Terry* v. *Ohio*, 392 U.S. 1, 21-22.

In the instant case, Petitioner's activity, prior to his being stopped by the officer, was in no way unusual, furtive, or in violation of the law. This is manifest by the facts adduced through the testimony of the officer upon the hearing and in the statement of facts contained in the opinion of the Appellate Court (Appendix A). The Appellate Court, however, in seeking to bring the facts of this case within the ambit of *Terry*, characterized the Petitioner's pre-stop conduct as "a course of conduct which caught (the officers') professional attention as police officers" (Appendix A, p. A.5).

Such conduct, according to the Appellate Court, in this case, included stopping in a shopping center parking lot and opening the trunk of his car, leaving the parking lot and entering the parking lot of a hotel, engaging therein

in conversation with another person, and then leaving the lot (Appendix A, p. A.5.).

Such conduct is not only not unusual or furtive, but, according to the officer upon the hearing, the appearance and activity of Petitioner was normal in that area on a typical autumn evening.*

The Appellate Court's conclusion that this activity appropriately "caught (the officer's) professional attention", is simply a rewording of the type of basis for detention which this Court specifically proscribed in *Terry, supra,*: an "inarticulate hunch".

As such, the Petitioner's original detention was unlawful as an unreasonable seizure based neither on probable cause nor specific and articulable facts leading the officer to conclude that criminal activity was afoot. Thus, the later search and seizure involving the Petitioner's likewise detained automobile without benefit of warrant can not be justified under any known exception to the warrant requirement.

In *Brown* v. *Texas*, 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed. 2d 357 (1979) this Court reversed the conviction of a man who was initially stopped by police for reasons similar to those in the instant case, and whose subsequent refusal to cooperate in identifying procedures led to prosecution. There the suspicious activity involved conversing with another man in an alley, separating upon the arrival of police, looking suspicious, and being in an area of high incidence of drug traffic. In *Brown*, this Court found that

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* Although the Appellate Court emphasizes in its opinion that the man in the plaid shirt was observed ducking down between cars prior to the detention, the record is clear that the man simply fell below the officer's limited field of vision and, as such, was not seen as a furtive move.

the officers' suspicion and the fact that the area was a high crime area were not sufficient to justify the stop where the defendant's activities, viewed objectively, were not unusual.

In the instant case, Petitioner's pre-stop activities, viewed objectively, were certainly not unusual. The Appellate Court's emphasis herein that parking lots are auto-theft prone is a similar observation to the "high drug traffic area" factor condemned in *Brown*.

It is significant that in *Brown*, this Court found that the officer therein, "when pressed, . . . acknowledged that the only reason he stopped (the defendant) was to ascertain his identity" (443 U.S. at 52). This Court found that that purpose does not negate the Fourth Amendment guarantees such to authorize the arbitrary detention which followed from that purpose. Interestingly, in the instant case, Officer Romani, when pressed to describe his purpose in initially stopping the Petitioner, explained that he had wanted to ask Petitioner for his driver's license and evidence of ownership of his vehicle. This, notwithstanding that Romani had already determined that the Beil vehicle was neither stolen nor wanted. Romani merely wanted to detain Beil for identification or pending his similarly unjustified stopping of the other vehicle. This Court's holding in *Brown*, *supra*, specifically condemns this practice. See also *Delaware* v. *Prouse*, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed. 2d 660 (1979), wherein this Court proscribed such arbitrary identification/registration checks absent reasonable suspicion that a driver is unlicensed or that an automobile is not registered, or articulable facts relating to criminal activity.

Every factual aspect of this case, from the innocent pre-detention activities of Petitioner, to the suspicions and motivations of the stopping officers, fits into the mold of

constitutional condemnation as set by this Court in *Terry* v. *Ohio, supra*, *Brown* v. *Texas, supra*, and *Delaware* v. *Prouse, supra*.

The initial detention of Petitioner being unlawful, the subsequent warrantless search of his vehicle and the seizure of items therefrom are likewise unlawful. The Appellate Court's order, reversing the trial court's suppression order, should itself be reversed and this Court should grant certiorari toward that end.

II.

WHERE THERE WAS NO PROBABLE CAUSE TO BELIEVE THAT PETITIONER OR HIS CAR WERE INVOLVED IN THE THEFT OF ANOTHER AUTO, WHERE THE POLICE NEITHER SOUGHT NOR EXPECTED TO FIND CONTRABAND OR FRUITS OR INSTRUMENTALITIES OF THE THEFT OF THE OTHER AUTO IN THE PETITIONER'S CAR, AND WHERE THE OFFICER TESTIFIED THAT HIS PURPOSE IN SEARCHING PETITIONER'S AUTO TRUNK WAS TO VERIFY PETITIONER'S OWNERSHIP THEREOF, WHICH VERIFICATION THE OFFICER HAD OTHERWISE ALREADY ACCOMPLISHED, THE WARRANTLESS SEARCH OF PETITIONER'S AUTO TRUNK AND SEIZURE OF ITEMS THEREFROM WAS VIOLATIVE OF PETITIONER'S FOURTH AMENDMENT RIGHTS, AND THE APPELLATE COURT ERRED IN REVERSING THE TRIAL COURT'S SUPPRESSION ORDER.

Building upon its holding that the initial detention of the Petitioner and his automobile was a justifiable *Terry* intrusion, the Appellate Court of Illinois held that the subsequent warrantless station-house search of Petitioner's automobile trunk was appropriate under the "automobile

exception" to the search warrant requirement. The Appellate Court cited as authority for this holding this Court's opinions from *Carroll* v. *United States*, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925), through *Chambers* v. *Maroney*, 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed. 2d 419 (1970), and up to *United States* v. *Ross*, ... U.S. ....., 102 S.Ct. 2157, 72 L.Ed. 2d 572 (1982) and *Michigan* v. *Thomas*, ... U.S. ....., 102 S.Ct. 3079, 73 L.Ed. 2d 750 (1982).

These cases, indeed, established the exception and went on to provide guidelines as to scope and situs for such automobile searches. The Appellate Court herein, in its opinion, concedes that such warrantless searches still require probable cause to believe that a crime has been committed and that evidence of that crime is contained in the subject vehicle.

Despite such concession to the law, however, the Appellate Court went on to ignore the facts of this case in determining that such probable cause existed here. The Court articulated its findings toward this end. It found that after the initial "*Terry*" stop, the officers determined that the car preceding Petitioner's car out of the hotel parking lot was apparently stolen. According to the Appellate Court, this fact amounted to probable cause that Petitioner was engaged in the theft of that auto (Appendix A, p. A.5), notwithstanding that Petitioner was not in that stolen car and had never been seen touching the stolen car. Nonetheless, the Appellate Court went on to find that the officers subsequently found tools in the backseat of Petitioner's own car (not burglary tools, as witness the charging of Petitioner with *constructive* possession of the burglary tools found in the stolen car). Thus, according to the Appellate Court, the officers then had probable cause to believe that Petitioner's car contained other evidence relat-

ing to the theft of the "white Cadillac" (Appendix A, pp. A. 5-6).

Not only is the Appellate Court being over-generous to the police in allowing them probable cause based on such marginal and innocuous facts, the Court ignores the fact that, according to the officer, he had already recovered all the tools the other man had used to steal the "white Cadillac", the officer was not looking for further evidence, much less did he think he had reason to so look; according to the officer's own testimony, he sought to search Petitioner's trunk merely to ascertain whether Petitioner actually owned the Beil car. (This, notwithstanding the officer had already determined Petitioner's rightful ownership of the car).

Thus, not only, under the circumstances of this case, was there no probable cause to search Petitioner's car for anything, the police made no pretense of seeking or expecting to find contraband, instrumentalities, or fruits of a crime, therein.

All the opinions of this Court cited by the Appellate Court require a presence of probable cause that a particularly sought item may be found in an automobile sought to be searched, with a warrant, or without a warrant under the exception. See *Warden* v. *Hayden*, 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed. 2d 782 (1967) and *Stanford* v. *Texas*, 279 U.S. 476, 85 S.Ct. 506, 13 L.Ed. 2d 431 (1965).

Probable cause for the search of Petitioner's car being totally lacking herein, the search and the seizure of the items pursuant thereto were unlawful. The Appellate Court's order, reversing the suppression order of the trial court, should itself be reversed, and this Court should grant certiorari herein toward that end.

CONCLUSION

For all the foregoing reasons, the Petition for Writ of Certiorari should be allowed to review the instant decision of the Appellate Court of Illinois, Second District.

Respectfully submitted,

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APPENDIX

APPENDIX A

81-645

IN THE

APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

Filed Nov. 12, 1982
Loren J. Strotz, Clerk
Appellate Court, 2nd District

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellant,

vs.

JAMES C. BEIL,

Defendant-Appellee.

Appeal from the 18th Judicial Circuit,
DuPage County, Illinois.

MR. JUSTICE NASH delivered the opinion of the court:

The State appeals from a pretrial order suppressing evidence seized from the trunk of defendant's car after a warrantless search alleged to have been conducted in violation of defendant's constitutional rights. We reverse.

On October 6, 1980, Detective James Romani of the Oak Brook Police Department was stationed in an unmarked squad car in the Oak Brook Shopping Center parking lot. At approximately 8 p.m., Romani observed a maroon Cadillac with three occupants driving in the parking lot

and stop near the officer's car. The driver of the maroon Cadillac exited the car and opened its trunk; Romani could not observe the driver's further actions while at the trunk. Romani made a radio check of the license plates which revealed that the car was registered to defendant, James Beil, at 4820 South Keeler in Chicago. The car was not reported as stolen nor was it wanted for any reason; however, Romani recalled that he had heard the name "Beil" on a prior occasion with regard to auto thefts in Chicago.

Subsequently, the driver got back into the maroon Cadillac and drove out of the parking lot. Romani was aware that parking lots in the area had a relatively high incidence of auto theft, and he followed the Cadillac across 22nd street and into the parking lot of the nearby Sheraton Hotel. There, Romani observed the maroon Cadillac parked in a driving aisle behind a 1967 white Cadillac convertible which was in "exceptional condition". A man wearing a plaid shirt was standing next to the maroon Cadillac in apparent conversation with the driver. Romani parked his car nearby and entered the hotel where he contacted another detective, Michael Golz, who was apparently watching that parking lot. The two detectives exchanged their observations and Golz informed Romani that he had seen the man in the plaid shirt duck down between the two Cadillacs. Romani left the hotel and noticed that the maroon Cadillac had backed up and that the white Cadillac was pulling out of its stall. Both cars, with the white Cadillac leading, then proceeded towards the 22nd street exit of the parking lot; at that time there were two persons in the maroon Cadillac and one person in the white Cadillac.

Romani and Golz stopped both cars at the exit and identified themselves as police officers. While defendant and the other passenger of the maroon Cadillac were producing identification, Romani went to the white Cadillac where he

observed that its ignition had been pulled and that there was a "slam hammer" still attached to it; there was a screw driver on the front seat.

Romani made a radio check of the license plates of the white Cadillac and learned it was registered to a Joseph Klingler, who was not one of the three men in the two cars. Romani returned to the Sheraton Hotel where he contacted Klingler who stated he had not given anyone permission to use his car. Upon returning to the automobiles, Romani noticed a vise grip and an Allen type wrench on the back seat of the maroon Cadillac. The three men were thereupon arrested and were taken to the police station with the two cars.

At the station, Romani and Golz searched the maroon Cadillac, including the trunk, and discovered additional burglary tools and other items; the search was conducted without a warrant and without Beil's consent. He was subsequently charged with felony theft and possession of burglary tools based upon his alleged accountability for the theft of the white Cadillac and constructive possession of those tools found in the white Cadillac.

Prior to trial, defendant moved to suppress the introduction of the property taken from his car trunk contending that the initial stop and subsequent search of his automobile were in violation of the Fourth and Fourteenth Amendments to the United States Constitution. After an evidentiary hearing, the trial court determined that the initial stop of the defendant and seizure of those tools found in the back seat of his car met constitutional standards; however, the court suppressed those tools and other property found in the trunk of Beil's car.

Generally, the Fourth Amendment requires police to obtain a warrant prior to the search or seizure of persons or property. However, it is recognized that a police officer

may stop and temporarily detain a person for the purpose of a limited investigation absent probable cause to arrest him if the officer is able to point to specific and articulable facts which, taken together with reasonable inferences drawn from the officer's experience, would reasonably warrant the extent of the intrusion. (*Terry* v. *Ohio* (1968), 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868; *Beck* v. *Ohio* (1964), 379 U.S. 89, 13 L. Ed. 2d 142, 85 S. Ct. 223; *Carroll* v. *United States* (1925), 267 U.S. 132, 69 L. Ed. 543, 45 S. Ct. 280.) In the case of an automobile, if the officer's investigation uncovers facts which give probable cause to believe that a crime has been committed and that evidence of that crime is contained in the vehicle in which the suspect is riding, the officer may conduct a search of the vehicle without a warrant. (*Michigan* v. *Thomas* (1982), ... U.S. ....., 73 L. Ed. 2d 750, 102 S. Ct. 3079; *United States* v. *Ross* (1982), ... U.S. ....., 72 L. Ed. 2d 572, 102 S. Ct. 2157; *Chambers* v. *Maroney* (1970), 399 U.S. 42, 26 L. Ed. 2d 419, 90 S. Ct. 1975; *Carroll* v. *United States* (1925), 267 U.S. 132, 69 L. Ed. 543, 45 S. Ct. 280.) Given probable cause, the permissible scope of such a warrantless search is as broad as that which a magistrate could have legitimately authorized by warrant. Thus, the search may extend to every part of the vehicle, and its contents, that may conceal the object of the search. (*United States* v. *Ross* (1982), ... U.S. ....., 72 L. Ed. 2d 572, 102 S. Ct. 2157; *People* v. *Clark* (Docket No. 55591, Sept. Term 1982), ... Ill. 2d ....., ... N.E. 2d .....) The permissible areas of search include the trunk of the vehicle. (*United States* v. *Ross* (1982), ... U.S. ....., 72 L. Ed. 2d 572, 102 S. Ct. 2157; *People* v. *Carter* (1967), 38 Ill. 2d 496, 232 N.E. 2d 692, *cert. denied* (1968), 391 U.S. 965, 20 L. Ed. 2d 877, 88 S. Ct. 2033.) The fact that the suspect may have been arrested and is without access to the vehicle or that the vehicle has been immobilized and taken to the station

house does not obviate the justification to conduct the warrantless search. The probable cause that develops at the scene still obtains at the station house. *Michigan* v. *Thomas* (1982), ... U.S. ....., 73 L. Ed. 2d 750, 102 S. Ct. 3079; *Texas* v. *White* (1975), 423 U.S. 67, 46 L. Ed. 2d 209, 96 S. Ct. 304; *Chambers* v. *Maroney* (1970), 399 U.S. 42, 26 L. Ed. 2d 419, 90 S. Ct. 1975; *People* v. *Joyner* (1972), 50 Ill. 2d 302, 278 N.E.2d 756.

We conclude that the initial stop of the defendant and the subsequent search of his car met constitutional standards. Prior to the stop, officers Romani and Golz each observed defendant and his companions engage in a course of conduct which caught their professional attention as police officers. This included stopping in the shopping center parking lot and opening the trunk of the car, then immediately exiting that lot and proceeding to another parking lot. There defendant parked his car behind the white Cadillac convertible and engaged in conversation with a man standing by the two cars who then ducked down between them. When the white Cadillac was then driven towards the exit defendant followed it in his car. At that point, based upon those observations and Romani's association of Beil's name with auto thefts, the officers had specific and articulable facts upon which to base a belief that further investigation was warranted. Their stop of defendant for that purpose was therefore proper.

After the stop, upon seeing the pulled ignition in the white Cadillac and the tools used to remove it, the officers verified with its owner that no one had permission to drive the car. The officers then had probable cause to believe that defendant was engaged in the theft of the white Cadillac and further upon seeing the additional tools on the back seat of defendant's maroon Cadillac, the officers also had probable cause to believe that evidence relating

to the theft of the white Cadillac may be contained in defendant's car. The officers were then justified in searching the entire car, including the trunk for such evidence. (*United States* v. *Ross* (1982), ... U.S. ....., 72 L.Ed.2d 572, 102 S.Ct. 2157.) Neither the fact that the officers delayed the search until the car was safely at the station nor that they obtained additional information regarding defendant's identity and ownership of the maroon Cadillac diminished the justification for the search. (*Michigan* v. *Thomas* (1982), ... U.S. ....., 73 L. Ed. 2d 750, 102 S. Ct. 3079.) We conclude the trial court erred in suppressing those items found in the trunk of defendant's car.

Defendant has relied upon *People* v. *Reincke* (1980), 84 Ill. App. 3d 222, 405 N.E.2d 430 and *People* v. *Rinaldo* (1980), 80 Ill. App. 3d 433, 399 N.E.2d 1027, *leave to appeal denied*, to support his argument. However, the facts presented by those cases are inapposite and the analysis applied preceded and is inconsistent with the definitive rulings of *United States* v. *Ross* (1982, ... U.S. ....., 72 L. Ed. 2d 572, 102 S. Ct. 2157 and *People* v. *Clark* (Docket No. 55591, Sept. Term 1982), ... Ill. 2d ....., ... N.E.2d .....

For the foregoing reasons the order of the circuit court of DuPage County is reversed and this cause remanded for further proceedings.

Reversed and remanded.

UNVERZAGT, VAN DEUSEN, JJ., concur.

APPENDIX B

ILLINOIS SUPREME COURT
JULEANN HORNYAK, Clerk
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

April 12, 1983

Mr. Edward M. Genson
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134 N. LaSalle St., S=300
Chicago, IL 60602

No. 57808 — People State of Illinois, respondent, vs. James C. Beil, petitioner. Leave to appeal, Appellate Court, Second District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ *Juleann Hornyak*

Clerk of the Supreme Court

Office-Supreme Court, U.S.
FILED
AUG 8 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-2022

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

JAMES BEIL,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois, Second District

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the police had reasonable and articulable suspicion that criminal activity was being, or was about to be engaged in, sufficient to allow an investigatory stop in accordance with *Terry v. Ohio*.

2. Whether the police had probable cause to search petitioner's trunk, where petitioner exited a parking lot, driving directly behind a stolen vehicle whose driver had previously been in his car, and where police found a vise grip and an Allen-type wrench in petitioner's back seat.

TABLE OF CONTENTS

	PAGE(S)
QUESTIONS PRESENTED FOR REVIEW	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
OPINION BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR DENYING THE WRIT:	
I.	
The Facts Of This Case Clearly Demonstrate That The Police Had Reasonable And Articulable Suspicion That Criminal Activity Had Been, Was, Or Was About To Be Engaged In, Sufficient To Allow An Investigatory Stop In Accordance With *Terry v. Ohio*	3
II.	
The Police Were Justified In Searching The Trunk Of Petitioner's Car, Based Upon The Fact That They Had Probable Cause To Believe That A Crime Had Been Committed And That Evidence Of That Crime Was Contained In Petitioner's Vehicle	6
CONCLUSION	8

TABLE OF AUTHORITIES

Cases

Brown v. Texas, 443 U.S. 47 (1979) 4, 5
Delaware v. Prouse, 440 U.S. 648 (1979) 4, 5
Terry v. Ohio, 392 U.S. 1 (1968) 3, 5
United States v. Place, 51 U.S.L.W. 4844 (June 20, 1983) 3, 4

Constitutional Provisions

U.S. CONST., Amend. IV 2
U.S. CONST., Amend. XIV 2

Other

LaFave, *Search and Seizure*, §9.3(c) 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

JAMES BEIL,

Petitioner,

VS.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois, Second District

RESPONDENT'S BRIEF IN OPPOSITION

OPINION BELOW

A copy of the opinion of the Illinois Appellate Court, Second District, can be found as Appendix A to petitioner's petition. The opinion is now reported as *People v. Beil*, 110 Ill. App. 3d 291, 442 N.E.2d 291 (2nd Dist. 1982).

JURISDICTION

Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. §1257(3). However, as treated more fully below, respondent submits that no good reason exists for this Court to exercise its sound judicial discretion and grant the petition for a writ of certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONST., Amend. IV provides that:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST., Amend. XIV provides, in pertinent part, that:

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The facts relevant to the issues raised by petitioner are adequately set forth in the opinion of the Illinois Appellate Court. *People v. Beil*, 110 Ill. App. 3d 291, 442 N.E.2d 291 (2nd Dist. 1982).

REASONS FOR DENYING THE WRIT

I.

THE FACTS OF THIS CASE CLEARLY DEMONSTRATE THAT THE POLICE HAD REASONABLE AND ARTICULABLE SUSPICION THAT CRIMINAL ACTIVITY HAD BEEN, WAS, OR WAS ABOUT TO BE ENGAGED IN, SUFFICIENT TO ALLOW AN INVESTIGATORY STOP IN ACCORDANCE WITH *TERRY v. OHIO*.

In *Terry v. Ohio*, 392 U.S. 1 (1968), this Court held that a police officer may stop and temporarily detain a person in order to make a limited investigation. The officer need not have probable cause to do so, but must be able to point to specific and articulable facts which, when combined with reasonable inferences drawn from the officer's experience, would warrant the extent of the intrusion. 392 U.S. at 27.

This term in *United States v. Place*, 51 U.S.L.W. 4844 (June 20, 1983), this Court noted that in *Terry*, the Court:

> implicitly acknowledged the authority of the police to make a *forcible stop* of a person when the officer has reasonable, articulable suspicion that the person

> has been, is, or is about to be engaged in criminal activity. [Emphasis in original].

51 U.S.L.W. at 4846.

Thus, in this case, it is a question of fact, i.e., whether Detective Romani had a reasonable and articulable suspicion that criminal activity had been, was, or was about to be engaged in. The state appellate court held that he did:

> Prior to the stop, Officers Romani and Golz each observed [petitioner] and his companions engage in a course of conduct which caught their professional attention as police officers. This included stopping in the shopping center parking lot and opening the trunk of the car, then immediately exiting that lot and proceeding to another parking lot. There [petitioner] parked his car behind the white Cadillac convertible and engaged in conversation with a man standing by two cars who then ducked down between them. When the white Cadillac was then driven towards the exit defendant followed it in his car. At that point, based upon these observations and Romani's association of Beil's name with auto thefts, the officers had specific and articulable facts upon which to base a belief that further investigation was warranted. Their stop of [petitioner] for that purpose was therefore proper.

110 Ill. App. 3d at 294, 442 N.E.2d at 293.

Petitioner argues that the activities observed by the officer amounted to nothing more than an "inarticulate hunch." Petition at 10. He cites *Brown v. Texas*, 443 U.S. 47 (1979) and *Delaware v. Prouse*, 440 U.S. 648 (1979) as applicable to the factual situation presented herein. However, a brief review of the facts in those cases reveals that they are substantially different from the instant case.

In *Brown v. Texas, supra*, police officers stopped a man walking in an alley because the situation "looked suspicious" and because they had never seen him in that area before. 443 U.S. at 48-49. Likewise, in *Delaware v. Prouse, supra*, a state police officer stopped a vehicle even though "he had observed neither traffic nor equipment violations nor any suspicious activity." 440 U.S. at 650. By the citations of these authorities, however, petitioner acknowledges that the issue before this Court is one of fact, rather than of some error in the legal analysis made by the state appellate court. Indeed, whether police observation of suspicious conduct rises to a level of cause to make an investigatory stop is clearly an issue of fact. See, LaFave, *Search and Seizure*, §9.3(a), 69-82. Petitioner does not argue that the *Terry* standard is incorrect or does not apply in this case, merely that the facts of this case do not amount to probable cause when analyzed under the *Terry* standard.

Respondent submits that the facts of this case clearly demonstrate specific and articulable facts, which, when combined with reasonable inferences drawn from Officer Romani's experience, gave him cause to stop the two Cadillacs for purposes of investigation. Romani's recognition of petitioner's name in connection with auto theft in the area; a high incidence of auto theft in the area; the man in the plaid shirt "ducking down" between the two cars; the two cars pulling out together; the individuals traveling from one parking lot to another, all combined to give rise to the authority to stop petitioner.

It is clear that there was no violation of *Terry v. Ohio, supra*. This Court should refuse to exercise its discretion and deny the petition for writ of certiorari.

II.

THE POLICE WERE JUSTIFIED IN SEARCHING THE TRUNK OF PETITIONER'S CAR, BASED UPON THE FACT THAT THEY HAD PROBABLE CAUSE TO BELIEVE THAT A CRIME HAD BEEN COMMITTED AND THAT EVIDENCE OF THAT CRIME WAS CONTAINED IN PETITIONER'S VEHICLE.

As indicated in Section I, *infra*, the police acted properly in making the initial stop of petitioner's Cadillac as well as the stolen Cadillac, as both vehicles exited the parking lot.

Petitioner claims, however, that he just happened to be exiting the lot at the same time as the stolen vehicle, and that his vehicle was improperly stopped and searched. Petitioner ignores the fact that he was observed as having the driver of the stolen Cadillac in his car, that a vise grip and an Allen-type wrench were found on his backseat, and that burglary tools were found in his trunk. 110 Ill. App. 3d at 292, 442 N.E.2d at 292. His scenario as having been in the wrong place at the wrong time is refuted by the facts.

As the appellate court correctly held:

> In the case of an automobile, if the officer's investigation uncovers facts which give probable cause to believe that a crime has been committed and that evidence of that is contained in the vehicle in which the suspect is riding, the officer may conduct a search of the vehicle without a warrant. (*Michigan v. Thomas* (1982), ... U.S. ....., 73 L.Ed.2d 750, 102 S.Ct. 3079; *United States v. Ross* (1982), ... U.S. ....., 72 L.Ed.2d 572, 102 S.Ct. 2157; *Chambers v. Maroney* (1970), 399 U.S. 42, 26 L.Ed.2d 419 90 S.Ct. 1975; *Carroll v. United States*, (1925), 267 U.S. 32, 69 L.Ed.2d 543, 45 S.Ct. 280). Given probable cause, the permissible scope of such a warrantless search is as

> broad as that which a magistrate could have legitimately authorized by warrant. Thus, the search may extend to every part of the vehicle, and its contents, that may conceal the object of the search. [Citations omitted]. The permissible areas of search include the trunk of the vehicle. [Citations omitted]. The fact that the suspect may have been arrested and is without access to the vehicle or that the vehicle has been immobilized and taken to the station house does not obviate the justification to conduct the warrantless search.

110 Ill. App. 3d at 293-294, 442 N.E.2d at 293. Little more need be said in support of a rejection of petitioner's argument, nor was the appellate court, as petitioner suggests, "over-generous" to the police. Rather, the court merely applied the law, as decided by this Court, to the actions of the police, and correctly found those actions to be in conformity with the law.

Thus, petitioner's contention that there was no authority to permit the police to search his car is without merit and should be rejected by this Court. Again, petitioner does not contend that the law in this area is incorrect, merely that the appellate court erred in its analysis of the factual situation presented in this case.

For the foregoing reasons, respondent respectfully requests that this Court decline to exercise its discretion, and deny the petition for writ of certiorari.

CONCLUSION

For the foregoing reasons, respondent respectfully requests that this Court deny the petitioner's petition for writ of certiorari.

Respectfully submitted,

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